

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAIRE-LISE KEMPF
Claimant

DISCOVERY TRAIL HEALTHCARE INC
Employer

APPEAL 17A-UI-09885-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/17
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claire-Lise Kempf (claimant) filed an appeal from the September 22, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Discovery Trail Healthcare, Inc. (employer) because she disliked the work environment, which is not a good cause reason attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on October 12, 2017. The claimant participated and was represented by Attorney Katrina M. Phillip. The employer's witness did not answer when called at the number registered for the hearing and did not participate. No exhibits were offered or received into the record.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Registered Nurse at the facility beginning on August 2016. The employer bought the facility in April 2017 and the claimant was separated from employment on August 25, 2017, when she quit. As a nurse, the claimant is licensed and required to provide a certain standard of care to maintain her licensure.

The claimant worked the overnight weekend shift, or Friday through Sunday 6:00 p.m. to 6:00 a.m. There are three floors with residents that receive overnight care. Two of the floors regularly have residents that require two people to lift and provide care. The nurses are responsible for overseeing the work of the aides.

When the claimant was hired, there was one nurse and one aide assigned to each floor. Additionally, if a floor had more than ten residents, the nurse was not allowed to leave the floor and could not have supervisory duty over an aide on another floor. After the employer bought the facility, it began to alter the staffing levels and removed the staffing requirements attached to the number of residents on a floor.

Approximately one week before the claimant quit, the employer announced it would cut back the aides working the overnight shift from three to two, so two of the three floors would share an aide. The claimant expressed her concerns during the meeting about patient care and the struggles that would be faced with residents who required two people to lift and provide care. The employees were told if they were not going to be team players that they could leave.

On August 25, 2017, the claimant reported for her shift. She learned at that time that one of the nurses had been moved to another shift during the week, which meant until 10:00 p.m. there would be two nurses and three aides and after 10:00 p.m. there would only be two nurses and two aides for the three floors that had approximately 60 residents. Most of the residents on two of the three floors required two people to provide care. The claimant expressed that with that level of staffing, proper care could not be provided to the residents and if something happened to one of the residents while she was assisting another resident it would put her license in jeopardy. Administrator Mike Anderson told the claimant it did not appear she was a good fit for the facility. The claimant decided to leave her employment rather than harm the residents or her livelihood as she did not believe she could provide adequate care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26 provides, in relevant part:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

...

(2) The claimant left due to unsafe working conditions.

...

(4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case, the unrefuted testimony is that the employer's staffing levels put the residents, the claimant, and her livelihood in harm by requiring the claimant to provide care which did not meet

the accepted standard of care in nursing. A reasonable person would find this resulted in unsafe and detrimental working conditions. Benefits are allowed.

DECISION:

The September 22, 2017, reference 01, unemployment insurance decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn